



1200 EIGHTEENTH STREET, NW
WASHINGTON, DC 20036

TEL 202.730.1300 FAX 202.730.1301
WWW.HARRISWILTSHIRE.COM

ATTORNEYS AT LAW

February 24, 2005

EX PARTE – Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Level 3 Petition for Forbearance*, WC Docket No. 03-266;
IP-Enabled Services, WC Docket No. 04-36

Dear Ms. Dortch:

On February 23, 2005, Kevin O'Hara, Bill Hunt and Cindy Schonhaut, all of Level 3 Communications, and I met with Commissioner Copps. We also met with Commissioner Adelstein.

In these meetings, we discussed points that are fully summarized in the attached document, which we provided to the Commissioners along with a copy of the QSI study, *IP-Enabled Voice Services: Impact of Applying Switched Access Charges to IP-PSTN Voice Services*, that was filed previously in the above-referenced dockets on January 27, 2005.

Sincerely,

/s/

John T. Nakahata
Counsel for Level 3 Communications, LLC

Enc.

Level 3 Forbearance Petition

WC Dockets No. 03-266 & 04-36

Needed Now – Clear Rules, Pending Comprehensive Reform

- *Level 3 Petition* requests the FCC to make clear *today's* intercarrier compensation rules for IP-PSTN traffic, pending comprehensive reform: “Who pays whom” and “How much”?
- “Who pays whom” and “how much” today will either be determined by FCC now, in advance, or piecemeal, in court retrospectively after years of litigation.
- States will reach piecemeal interim decisions in state arbitrations.
 - CA: Local compensation
 - KS: Access charges
 - IN, MI: Bill and Keep
 - IL: No jurisdiction to address

The Case for Clear Rules: 4

Different ILEC Views

- BellSouth, Verizon, SBC and Qwest all have different views about “who pays whom” and “how much” under today’s rules.
- BellSouth and Verizon never explain how intrastate access can be assessed post-*Vonage Order* to an interstate IP-PSTN service.
- SBC would charge intrastate access rates even for “local” calls (e.g. TlPToP tariff). This is anticompetitive and ignores plain language of rule 69.5(b).
- Qwest believes ESP exemption applies to limit applicability of access charges, but interprets that exemption too narrowly.

Views On IP-PSTN Traffic

	CenturyTel	BellSouth	Verizon	SBC	Qwest	Level 3
Info. Service?*	No	Sometimes	?	Yes	Yes	Yes
Interstate Access Applies?	Yes if IP User not phys. local	Yes if IP User not phys. local	Yes (by NPA-NXX)	Yes	Yes if ESP not in local calling area	No (for IP-PSTN carrier exchange)
Intrastate Access Applies?	Yes if IP User not phys. local	Yes if IP User not phys. local	Yes (by NPA-NXX)	No	?	No (for IP-PSTN carrier exchange)
Recip. Comp for "local" dialed?	Yes (but only if IP User phys. local)	Yes (but only if IP User phys. local)	Yes (by NPA-NXX)	No	Yes (but only if ESP in local calling area)	Yes (for IP-PSTN carrier exchange)

* FCC need not decide classification to grant Level 3 Petition.

What They Said Then

- SBC (just 8 months ago in its *IP-Enabled Services Comments*) –
 - “The surest way to depress investment in any industry is to sow confusion about what the ground rules are for competition and everyday operations.”
 - The FCC should act to clarify intercarrier compensation for IP-PSTN traffic “preferably by the end of [2004]”
 - Such clarification “need not await resolution of all other public policy issues” before the FCC.

Benefits of Granting Level 3 Petition

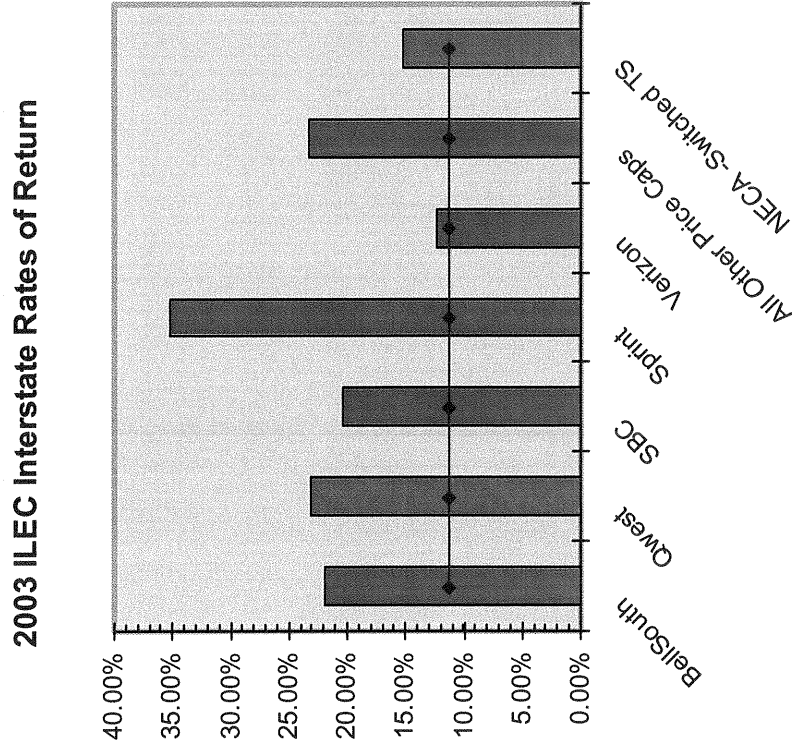
- Better, more innovative services for consumers at lower prices.
- Increased investment in broadband applications that include voice.
- Increased broadband subscription, as VoIP drives broadband purchases and VoIP makes broadband more affordable.
- President George W. Bush on broadband: ***“If you want something to flourish, don’t tax it.”***

Level 3 Petition & Comprehensive Reform

- Grant will speed comprehensive reform. ILECs will have a greater incentive to achieve reform.
- Grant will not reduce Level 3's incentives for reform.
 - “In Washington, DC there are no final victories and no final defeats.” IP-PSTN rules may be clear in the interim, but will not be stable until comprehensive reform.
 - Level 3 pays access on other traffic and receives reciprocal compensation, so comprehensive reform remains important, even apart from IP-PSTN traffic.
- Verizon/BellSouth legal theories halt comprehensive reform (they fail to reach intrastate access).

Level 3 Petition & Universal Service

- No impact on explicit funds (Level 3 supports connections/numbers-based reform)
- ILEC revenues do not equate to universal service. No dollar for dollar relationship.
- High ILEC Interstate Rates of Return (most recent reported data)



Level 3 Petition & Universal Service (cont'd)

- QSI Study shows small impact on large ILECs (~ 1.17% of 2005 access revenues, 1.89% in 2006).
- Future impact on ILEC revenues mitigated substantially if FCC moves quickly on comprehensive reform.
- No legal basis for assessing intrastate access post-*Vonage Order* on interstate IP-PSTN service.
- Largest continuing impact on ILEC access revenues is from wireless (largely owned by ILECs).

Level 3 Petition & Rural LECs

- Petition exempts all LECs that are subject to the “rural exemption.”
 - Can only be lifted by the state PUC.
 - Carve-out is legally defensible under public interest test of the forbearance analysis.
 - Unless the state lifts the rural exemption, direct interconnection can only be through access trunks or 251(a) agreement.
- FCC could fully address indirect IP-PSTN interconnection (i.e. via Bell tandem) in any order (e.g. indirect delivery over access trunks only, including use of off-net IXC termination).

Level 3 Seeks Symmetrical Rates

- Contrary to SBC's arguments, Level 3 is not seeking to charge access while it pays recip. comp.
- Level 3 charges recip. comp. when it terminates traffic from an IXC to a Level 3 IP-based end user.
- Level 3 supports making this symmetrical compensation clear in any order.
- Note: SBC's complaint is with existing ESP exemption, not Level 3's position.

Implementation Issues Can Be Addressed by Carriers

- RBOCs have implementation sequence backwards: first FCC needs to say “who pays whom,” and “how much,” then engineers design implementation systems.
 - No implementation in Part 69 or recip. comp. rules.
- Level 3 interconnection agreements with BellSouth, Verizon and SBC provide models for addressing issues on a “carrier-to-carrier” basis.
- All parties have an incentive to address implementation once rules are known because of the cost and uncertainty of billing disputes.

ILEC View of ESP Exemption

Ignores Rule and History

- All ILECs except Qwest argue ESP Exemption does not apply to IP-PSTN communications.
- These ILECs ignore plain language of rule 69.5(b), which limits switched access charges to “interexchange carriers.”
- History and plain language of 69.5 makes clear that ESPs are classified as “end users” under access rules, and thus are not subject to switched access charges, including when the PSTN party is not the ESP’s customer.

Verizon's TELRIC Switching Arguments are a "Red Herring"

- Verizon argues that reciprocal compensation rates are unjust and unreasonable because they are set based on TELRIC principles.
- For termination, however, there is no issue of "buy" v. "rent" for switching capacity, and no issue of the CLEC's incentive to invest in its own switch. Termination can only be purchased from carrier serving end user, and cannot be bypassed, even when a carrier has its own switch.
- In any event, Supreme Court has upheld TELRIC methodology as just and reasonable.

ISP-Bound Compensation is Another “Red Herring”

- Relationship to ISP-Bound 3:1 formula is a side issue, separate from core questions of “who pays whom” and “how much” for IP-PSTN traffic.
- Level 3’s interconnection agreement with Verizon (and SBC and BellSouth) sets a fixed price for ISP-bound, without regard to 3:1 ratio.

Who Supports Level 3 Petition?

(or *Opposes Access Charges for IP-PSTN Traffic in 04-36)

- VON Coalition (includes service and major hardware/software providers)
- Progress & Freedom Foundation
- Mercatus Center* (George Mason Univ.)
- ITAA
- Comptel/Ascent
- Columbia Capital
- Dialpad Communications
- USA Datanet
- Pinpoint Commun. (rural CLEC affil. of rural ILEC)
- Vonage
- 8 x 8 (Packet 8)
- Pulver.com*
- Broadwing
- Global Crossing
- AT&T
- MCI
- Nuvio Corp.
- Volo Communications
- ICG Communications